STATE OF MICHIGAN

COURT OF APPEALS

FRANK HOUSTON, EDNA FREIER, CHRISTY JENSON, LORETTA COLEMAN, JIM NASH, DAVID RICHARDS, and ERIC COLEMAN,

Plaintiffs-Appellees,

v

GOVERNOR,

Defendant,

and

OAKLAND COUNTY BOARD OF COMMISSIONERS,

Defendant-Appellant.

FOR PUBLICATION
March 7, 2012

No. 308724
Ingham Circuit Court
LC No. 12-000010-CZ

FRANK HOUSTON, EDNA FREIER, CHRISTY JENSON, LORETTA COLEMAN, JIM NASH, DAVID RICHARDS, and ERIC COLEMAN,

Plaintiffs-Appellees,

v

GOVERNOR,

Defendant-Appellant,

and

OAKLAND COUNTY BOARD OF COMMISSIONERS,

Defendant.

No. 308725
Ingham Circuit Court
LC No. 12-000010-CZ

Before: METER, P.J., and M. J. KELLY and RONAYNE KRAUSE, JJ.

METER, J. (*concurring in part and dissenting in part*).

Because I believe that 2011 PA 280 is constitutional in its entirety, I respectfully dissent from the part of the majority opinion that invalidates the first sentence of § 1(2). I would reverse the decision of the circuit court and uphold the act as written.

In concluding that the first sentence of 2011 PA 280, § 1(2), is unconstitutional as an improperly adopted local law, the majority finds dispositive *Michigan v Wayne County Clerk*, 466 Mich 640; 648 NW2d 202 (2002). The statute at issue in that case applied to a city with a population of 750,000 or more with a city council composed of nine at-large council members. *Id.* at 642. Only Detroit met the criteria and thus was required to place a particular question on the ballot at the August 6, 2002, general election. *Id.* The Supreme Court, in deciding whether the statute was a general or local act, stated:

> In this case, the statute plainly fails to qualify as a general act. Even if another city reaches a population of 750,000, and has a nine-member at-large council, Act 432 would not apply because of its requirement that the proposition appear on the ballot at the August 6, 2002, election. No other city can meet that requirement because there will be no new census before that date. [*Id.* at 643.]

2011 PA 280 states, in § 1:

> (1) Within 60 days after the publication of the latest United States official decennial census figures, the county apportionment commission in each county of this state shall apportion the county into not less than 5 nor more than 21 county commissioner districts as nearly of equal population as is practicable and within the limitations of section 2.
>
> (2) If a county is not in compliance with section 2 on the effective date of the amendatory act that added this subsection, the county apportionment commission of that county shall, within 30 days of the effective date of the amendatory act that added this subsection, apportion the county in compliance with section 2. For subsequent apportionments in a county that is apportioned under this subsection, the county apportionment commission of that county shall comply with the provisions of subsection (1).

Section 2 states:

County Population	Number of Commissioners
Under 5,001	Not more than 7
5,001 to 10,000	Not more than 10
10,001 to 50,000	Not more than 15
Over 50,000	Not more than 21

Section 3 states, in part:

> (1) Except as otherwise provided in this 26 subsection, the county apportionment commission shall consist of the county clerk, the county treasurer, the prosecuting attorney, and the statutory county chairperson of each of the 2 political parties receiving the greatest number of votes cast for the office of secretary of state in the last preceding general election. If a county does not have a statutory chairperson of a political party, the 2 additional members shall be a party representative from each of the 2 political parties receiving the greatest number of votes cast for the office of secretary of state in the last preceding general election and appointed by the chairperson of the state central committee for each of the political parties. In a county with a population of 1,000,000 or more that has adopted an optional unified form of county government under 1973 PA 139, MCL 45.551 to 45.573, with an elected county executive, the county apportionment commission shall be the county board of commissioners. The clerk shall convene the apportionment commission and they shall adopt their rules of procedure. A majority of the members of the apportionment commission shall be a quorum sufficient to conduct its business. All action of the apportionment commission shall be by majority vote of the commission.

There is a fundamental difference between the statute at issue in *Wayne County Clerk* and 2011 PA 280. The crux of the statute as discussed in *Wayne County Clerk* was the requirement that a certain question be placed on the ballot on August 6, 2002. *Wayne County Clerk*, 466 Mich at 642. Because of this temporal limitation, it was not possible for a city other than Detroit to be subject to the requirement of the statute. *Id.* at 642-643. All counties, by contrast, are subject to the requirements of 2011 PA 280. As stated by the Oakland County Board of Commissioners on appeal: "The [number] of allowable commissioners applies immediately to every county with a population over 50,000, which includes multiple counties, not just Oakland County. There are at least 35 counties that this limitation will apply to upon the effective date, and it will continue to apply to every county that ever reaches 50,000 in the future." While the ballot requirement in *Wayne County Clerk* applied only to Detroit, the limitation on commissioners at issue here *applies to multiple counties*. It is a general law, not a local law.[1]

[1] Even if I were to focus on the action of "reduction" in determining whether the act, or whether the first sentence of § 1(2) of the act, is general or local—i.e., even if I were to conclude that a "reduction" of commissioners by multiple counties must be necessary in order for the act or the sentence to be a general law—it would be possible for a county such as Wayne to modify its charter before the effective date of 2011 PA 270 in order to have more than 21 commissioners and thus be required to undertake a "reduction." Unlike the majority, I do not find this possibility akin to the possibility of a new census occurring in *Wayne County Clerk*. In *Wayne County Clerk*, the act in question was passed in 2002, with an effective date of June 6, 2002. See 2002 PA 432. It was fundamentally impossible that a time-consuming new census could have been completed before the August 6, 2002, election referred to in the act. See *Wayne County Clerk*, 466 Mich at 643.

The trial court focused, and the majority focuses, on the procedural requirement stating that "[i]f a county is not in compliance with section 2 on the effective date of the amendatory act that added this subsection, the county apportionment commission of that county shall, within 30 days of the effective date of the amendatory act that added this subsection, apportion the county in compliance with section 2." A similar 30-day requirement was included in the county apportionment act as originally enacted. 1966 PA 261.[2] The act stated, in part:

> In counties under 75,000, upon the effective date of this act, the boards of commissioners of such counties shall have not to exceed 30 days in which to apportion their county into commissioner districts in accordance with the provisions of this act. If at the expiration of the time as set forth in this section a board of commissioners has not so apportioned itself, the county apportionment commission shall proceed to apportion the county under the provisions of this act. [*Id.*]

In *Kizer v Livingston Co Bd of Comm'rs*, 38 Mich App 239, 246; 195 NW2d 884 (1972), the Court, analyzing the county apportionment act, considered whether the 30-day period allowing for self-apportionment applied only to the time immediately following the enactment of the statute or whether it applied after each census. The Court concluded that the 30-day period was a single exception allowing for self-apportionment for 30 days after enactment of the statute. *Id.* at 256. The Michigan Supreme Court in *In re Apportionment of Tuscola Bd of Comm'rs*, 466 Mich 78, 84 n 6; 644 NW2d 44 (2002), expressed "concerns" about the holding in *Kizer* but declined to resolve the issue anew. 2011 PA 280 sets forth a clearer directive with regard to the 30-day compliance period following the effective date of the act. I cannot conclude that the inclusion of a compliance provision for the period immediately following the effective date of the act somehow transforms this general act, or a part of this general act, into a local act that must be voided. As noted in *Chamski v Cowan*, 288 Mich 238, 258; 284 NW2d 711 (1939), statutes should be construed, if possible, to give full effect to every provision.

Chamski is a somewhat analogous case. In *Chamski*, the Michigan Supreme Court considered whether a statute that related to the selection and number of probate judges and that contained certain population classifications was a general act or an invalid local act. *Id.* at 253, 257. Although the Court did not provide a particularly detailed analysis concerning the applicability of the law to various counties, it did conclude that, because "[t]he act in question provides a specific method for its application to other counties as they acquire greater population," it came within the rule specifying that an act applying to only one city or county may nonetheless be valid as a general act if it could, in the future, apply to others. *Id.* at 256-257. The Court also stated:

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[2] I include this information not to imply, misleadingly, that the 30-day provision in 1966 PA 261 applied to only one county but instead to illustrate that in enacting 2011 PA 280 the Legislature was following a template, including an immediate compliance provision, set forth years ago for the county apportionment act.

> It is contended by plaintiff the "open end" provided in the act is closed by operation of two clauses contained therein, one that: "A selection as herein provided shall be made within fifteen days of the effective date of this act;" and the other: "Provided, That any county that has failed to elect an additional probate judge, or judges, under this section, prior to July one, nineteen hundred thirty-two, shall be not entitled to elect any additional judge, or judges, under the provisions of this section." [*Id.* at 257.]

The Court stated that "[i]f the legislature had intended the above clauses to prevent inclusion of counties subsequently acquiring the required population, it would not have provided a method for such inclusion," and that "[t]he clauses pointed out were to promote speedy action on the part of counties having the required population." *Id.* at 257-258. The Court held the act in question constitutional. *Id.* at 258.

Although I conclude above that the 21-commissioner limit at issue in the present case clearly applies to multiple counties *already*, 2011 PA 280 also provides a mechanism for counties to be reevaluated in the future to ensure that they comply with the various commissioner limits. There must be a certain reapportionment within 30 days of the effective date of 2011 PA 280, but 2011 PA 280 also provides a mechanism for reapportionments in the future. As such, 2011 PA 280 as a whole falls within the general parameters of the *Chamski* holding and is constitutional.

2011 PA 280 also provides, in § 3, that "[i]n a county with a population of 1,000,000 or more that has adopted an optional unified form of county government under 1973 PA 139, MCL 45.551 to 45.573, with an elected county executive, the county apportionment commission shall be the county board of commissioners." This provision, too, is a general law, not a local law. As again aptly stated by the Oakland County Board of Commissioners on appeal, the requirement "concerning the composition of the county apportionment commission applies to each and every county that ever meets the three stated requirements and there is no time limitation for doing so. Because multiple counties could easily achieve this result,[3] certainly by the next census, 2011 PA 280 easily passes the 'test' for a general law . . . ." *Wayne County Clerk* and *Chamski* are applicable to section 3 of 2011 PA 280 and indicate that this section is constitutional.

I conclude that the trial court erred in finding that 2011 PA 280 is unconstitutional as an improperly applied local act. My conclusion is informed, in part, by the axiom that "[s]tatutes . . . must be construed in a constitutional manner if possible." *Gora v Ferndale*, 456 Mich 704, 711; 576 NW2d 141 (1998). As noted in *Owosso v Pouillon*, 254 Mich App 210, 213; 657 NW2d 538 (2002), "[s]tatutes are presumed to be constitutional unless their unconstitutionality is clearly apparent." I find no clearly apparent unconstitutionality in assessing whether any part of 2011 PA 280 constitutes a local act.

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[3] The majority, in upholding § 3, implicitly concludes that multiple counties could achieve this result, but it simultaneously concludes that it will be impossible for a county such as Wayne to enlarge its number of commissioners before the effective date of 2011 PA 280.

I also conclude that the trial court erred in deeming 2011 PA 280 unconstitutional as a violation of the Headlee Amendment, Const 1963, art 9, § 29. The Headlee Amendment provides, in relevant part:

> The state is hereby prohibited from reducing the state financed proportion of the necessary costs of any existing activity or service required of units of Local Government by state law. A new activity or service or an increase in the level of any activity or service beyond that required by existing law shall not be required by the legislature or any state agency of units of Local Government, unless a state appropriation is made and disbursed to pay the unit of Local Government for any necessary increased costs. [Const 1963, art 9, § 29.]

By the plain language of the Headlee Amendment, the state is only required to reimburse a locality for "any necessary increased costs" of a new activity or service or an increase in the level of an activity or service required by a new law adopted by our Legislature. Perhaps the reapportionment of the Oakland County Board of Commissioners required by 2011 PA 280 could be considered a "new activity" because it requires a second or replacement reapportionment in accordance with the new requirements for county commissions adopted by the act. I will assume as much, without actually deciding the issue. Nevertheless, reasonably considered, 2011 PA 280 does not impose "any necessary increased costs" on Oakland County. Considering the aggregate effect of the reapportionment, it is beyond any reasonable question that the cost reduction to Oakland County for county commissioner salaries resulting from the reduction of the Oakland County Board of Commissioners from 35 to 21 members will far outweigh the relatively minimal cost of the reapportionment.

At least implicitly, the circuit court's conclusion to the contrary depends on considering the costs of the initial and mechanical aspects of the reapportionment process for Oakland County under 2011 PA 280 as a distinct "activity" in isolation from the savings flowing to the county from the reduction in size of the county commission under that reapportionment. I simply do not believe that is a reasonable analysis. The overall "activity" required of Oakland County by 2011 PA 280 is to reduce the membership of its county commission from 35 to 21 members and to carry out redistricting as provided for in the act to achieve that requirement. It was unreasonable for the circuit court to disaggregate the minimal costs associated with the redistricting from the substantial savings that will be achieved by that redistricting in considering the costs of this new "activity."[4] Indeed, the "'Headlee [Amendment], at its core, is intended to prevent attempts by the Legislature "to shift responsibility for services to the local government . . . in order to save the money it would have had to use to provide the services itself."'" *Owczarek*

[4] To use an analogy, if a new state law required localities to send certain notices via e-mail that had previously been required by state law to be sent through ordinary mail via the postal service with a resulting cost savings to the localities from substantially reduced postage expenses, it would be absurd to regard any initial cost to the localities from buying the necessary software for the e-mail system as a distinct new "activity" for which the state would have to reimburse the localities under the Headlee Amendment.

v Michigan, 276 Mich App 602, 611; 742 NW2d 380 (2007), quoting *Adair v Michigan*, 470 Mich 105, 112; 680 NW2d 386 (2004), quoting *Judicial Attorneys Ass'n v Michigan*, 460 Mich 590, 602-603; 597 NW2d 113 (1999). It is plain that this purpose would not be served by regarding a redistricting requirement that neither shifts state government services onto a locality nor increases aggregate costs to that locality as involving increased costs for which the state must reimburse the locality.

I also reject the circuit court's conclusion that 2011 PA 280 unconstitutionally deprives Oakland County electors of a right to seek judicial review of the reapportionment required by the act. The circuit court's entire analysis of this issue is predicated on the act's not allowing an elector the full 30-day period provided for by MCL 46.406 to seek review in this Court of a plan for reapportionment of a county commission.[5] However, MCL 46.406 is merely a *statutory* provision, not a constitutional one. The circuit court cites nothing to establish that there is a *constitutional* right to a 30-day period for an elector to seek judicial review of a county commission reapportionment plan, and I am confident that no constitutional provision has been interpreted to provide such a specific time requirement. Moreover, it appears undisputed that Oakland County has adopted resolutions providing for the reapportionment process to be completed by April 27, 2012, which would still provide significant time for judicial review before the May 15, 2012, filing deadline for candidates for the August 2012 primary election. In any event, any claim of a constitutional deprivation of a right to judicial review by 2011 PA 280 would not be ripe until and unless circumstances actually arise in which an elector seeks such review of an actual reapportionment plan and then contends that there is inadequate time for proper judicial review. See *Citizens Protecting Michigan's Constitution v Secretary of State*, 280 Mich App 273, 282; 761 NW2d 210, aff'd on other grounds 482 Mich 960 (2008) (claim not ripe "if it rests upon contingent future events that may not occur as anticipated, or may not occur at all").

I would reverse in its entirety the circuit court's finding of unconstitutionality.

/s/ Patrick M. Meter

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[5] MCL 46.406 states:

Any registered voter of the county within 30 days after the filing of the plan for his county may petition the court of appeals to review such plan to determine if the plan meets the requirements of the laws of this state. Any findings of the court of appeals may be appealed to the supreme court of the state as provided by law.

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9:00 a.m.

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No. 308725
Ingham Circuit Court
LC No. 12-000010-CZ

2

Before: METER, P.J., and M. J. KELLY and RONAYNE KRAUSE, JJ.

M. J. KELLY, J.

This case involves plaintiffs' challenge to the constitutionality of 2011 PA 280 (Public Act 280). The circuit court determined that 2011 PA 280 was unconstitutionally enacted. For that reason, on February 21, 2012, it entered an order declaring the act to be unconstitutional and granting summary disposition in plaintiffs' favor. The Oakland County Board of Commissioners appealed that order by right in docket number 308724 and the Governor appealed the same order by right in docket number 308725. We conclude that Public Act 280 contained a provision that constitutes a local act. Because the Legislature enacted 2011 PA 280 without complying with the requirements of Const 1963, art 4, § 29, that provision is unconstitutional. Accordingly, we agree with the circuit court's conclusion that part of 2011 PA 280 is unconstitutional, but we do not agree that the whole act is unconstitutional. For that reason, we affirm in part, reverse in part, and remand this case to the circuit court.

I. FACTUAL BACKGROUND

After the 2010 decennial census, but before the enactment of 2011 PA 280, the apportionment commission for Oakland County adopted a reapportionment plan for the Oakland County Board of Commissioners. The apportionment commission adopted the plan consistent with the statutory scheme applicable to the apportionment of county boards of commissioners. See MCL 46.401 *et seq.* Thereafter, the Legislature enacted 2011 PA 280, which the Governor signed on December 19, 2011.

With Public Act 280, the Legislature amended key provisions of MCL 46.401, MCL 46.402, and MCL 46.403. The Legislature amended MCL 46.401 to reduce the maximum number of commissioners that a county may have from 35 to 21. See 2011 PA 280, § 1(1). It also amended MCL 46.401 to include a new subsection. The new section, MCL 46.401(2), provided for reapportionment in counties that were not in compliance with the newly reduced level of commissioners:

> If a county is not in compliance with [MCL 46.402] on the effective date of the amendatory act that added this subsection, the county apportionment commission of that county shall, within 30 days of the effective date of the amendatory act that added this subsection, apportion the county in compliance with [MCL 46.402]. For subsequent apportionments in a county that is apportioned under this subsection, the county apportionment commission of that county shall comply with the provisions of subsection (1). [2011 PA 280, § 1(2).]

In addition, the Legislature amended MCL 46.403(1) to change the membership of the apportionment commission for certain counties: "In a county with a population of 1,000,000 or more that has adopted an optional unified form of county government under 1973 PA 139, MCL 45.551 to 45.573, with an elected county executive, the county apportionment commission shall be the county board of commissioners." See 2011 PA 280, § 3(1).

The practical effect of these amendments was to reduce the Oakland County Board of Commissioners—and only the Oakland County Board of commissioners—from 35 to 21 members and to require the Oakland County Board of Commissioners to adopt a reapportionment plan for the districts from which its members will be elected.

The circuit court examined Public Act 280 and determined that it was unconstitutional on three grounds: it determined that Public Act 280 was a local act and that the Legislature failed to enact it in compliance with Const 1963, art 4, § 29, that it amounted to an unfunded mandate enacted in violation of the Headlee Amendment, see Const 1963, art 9, § 29, and that it would not allow a proper opportunity for judicial review of the required new apportionment. As more fully explained below, we agree that Public Act 280 is unconstitutional in part because it is a local act that was enacted in contravention of Const 1963, art 4, § 29.

II. ANALYSIS

A. STANDARD OF REVIEW

This Court reviews de novo a trial court's decision to grant summary disposition. *Barnard Mfg Co, Inc v Gates Performance Engineering, Inc*, 285 Mich App 362, 369; 775 NW2d 618 (2009). Similarly, this Court reviews de novo whether an act was enacted in violation of Michigan's constitution. See *Taxpayers of Michigan Against Casinos v Michigan*, 471 Mich 306, 317-318; 685 NW2d 221 (2004). This Court presumes that a statute is constitutional unless its unconstitutionality is clearly apparent. *McDougall v Schanz*, 461 Mich 15, 24; 597 NW2d 148 (1999).

B. LOCAL ACTS

Since the adoption of Michigan's 1908 constitution, see Const 1908, art 5, § 30, there has been a provision limiting the Legislature's authority to enact local or special acts. With Const 1963, art 4, § 29, the people of this state provided that the Legislature "shall pass no local or special act in any case where a general act can be made applicable" and, when the Legislature elects to pass a local or special act, the act shall not take effect "until approved by two-thirds of the members elected to and serving in each house and by a majority of the electors voting thereon in the district affected." The people adopted this limitation in order to prevent the Legislature's "'pernicious practice'" in passing local acts, which amounted to "'a direct and unwarranted interference in purely local affairs and an invasion of the principles of local self-government.'" *Advisory Opinion on Constitutionality of 1975 PA 301*, 400 Mich 270, 286-287; 254 NW2d 528 (1977), quoting *Attorney General ex rel Dingeman v Lacy*, 180 Mich 329, 337-338; 146 NW 871 (1914). This practice led to abuse because the "'representatives from unaffected districts were usually complaisant, and agreed to its enactment without the exercise of that intelligence and judgment which all legislation is entitled to receive . . . .'" *Id.*

In evaluating whether an act is a local or special act, courts will examine the substance of the act rather than its form. *Rohan v Detroit Racing Ass'n*, 314 Mich 326, 349; 22 NW2d 433 (1946). Further, the fact that an act contains limitations—such as a population threshold—that appear to target a single municipality does not remove the act from general application if it is possible that another municipality or county might someday qualify for inclusion:

> The probability or improbability of other counties or cities reaching the statutory standard of population is not the test of a general law. In the above cases the acts were sustained as general upon the hypothesis that other municipalities would attain the provided population. By the same token, it must be assumed here that other counties will [meet the criteria.] Unless the act works under such conditions, it is a local, not a general, act. [*City of Dearborn v Wayne Co Bd of Supervisors*, 275 Mich 151, 157; 266 NW 304 (1936).]

"However, where the statute cannot apply to other units of government, that is fatal to its status as a general act." *Michigan v Wayne County Clerk*, 466 Mich 640, 643; 648 NW2d 202 (2002).

In holding 2011 PA 280 to constitute an unconstitutional local act, the circuit court emphasized that, on its effective date, Public Act 280 will only affect Oakland County—Oakland County alone will lose commissioners and be required to undertake a second apportionment within 30 days of the act's effective date. To the extent that Public Act 280 requires reapportionment within 30 days of its enactment, we agree with the circuit court's conclusion that it is a local act. In this regard, we conclude that our Supreme Court's decision in *Wayne County Clerk* is dispositive.

In *Wayne County Clerk*, the Legislature enacted a public act that would have required the city of Detroit to place a proposal on the August 6, 2002 election ballot to change an at-large system of electing its city council to a single-member district plan of organization. See *Wayne County Clerk*, 466 Mich at 641. The statute at issue in *Wayne County Clerk* did not mention Detroit by name. *Id.* at 642. Rather, it "purport[ed] to apply to any city with a population of more than 750,000 that has a nine-member at-large elected city council." *Id.* However, only Detroit met that population requirement. *Id.*

Our Supreme Court first recognized that population-based statutes "have been upheld against claims that they constitute local acts where it is possible that other municipalities or counties can qualify for inclusion if their populations change." *Id.* Nevertheless, the Court held that the statute at issue did not qualify as a general act because, even if another city reached the population threshold of 750,000 and had a nine-member at-large council, the statute would not apply because of the requirement that the proposition appear on the August 6, 2002 ballot. Because there would not be a census before that date, no other city could meet the population requirement. *Id.* at 643. Accordingly, our Supreme Court concluded that the statute did not validly direct placement of the proposition on the August 6, 2002 ballot because it was not passed by a two-thirds vote of the Legislature as required by Const 1963, art 4, § 29. In other words, the statute at issue in *Wayne County Clerk* was unconstitutional because it was an improperly adopted local act. *Id.* at 643-644.

As in *Wayne County Clerk*, it is manifest that Public Act 280 is—at least in part—directed at a single locality: Oakland County. Oakland County alone would be required to reduce the number of members on its county board of commissioners and to undertake a second reapportionment of its county board of commissioners within 30 days of the effective date of the act. Moreover, as in *Wayne County Clerk*, there is no realistically possible way in which any other locality could be affected by these requirements within that 30-day time frame.

Defendants attempt to refute this fact by imagining hypothetical scenarios in which other counties could enlarge the number of members on their county commissions and adopt new forms of county governance so as to become subject to Public Act 280's requirement to reduce the size of their county commissions and to undertake reapportionment. But their attempts do not alter the fact that the first sentence of 2011 PA 280, § 1(2) will invariably apply only to Oakland County. It is implicit in the holding in *Wayne County Clerk* that, where a statute can practically affect only one municipality within a specific time frame, *practically* impossible scenarios should not remove the statute from being considered an unconstitutional local act. Particularly, our Supreme Court considered it decisive that no other city could qualify under the statute "because there will be no new census before that date [August 6, 2002]." *Id.* at 643. Obviously, the statute at issue in *Wayne County Clerk* was passed before the August 6, 2002 election date that it implicated. And, at least in theory, one might imagine a scenario where Congress required a new census to have been conducted in the interval between the passage of the statute at issue and the August 6, 2002 election. After all, US Const, Art I, § 2, clause 3, does not preclude Congress from providing for a census to be conducted more frequently. But our Supreme Court did not adopt a test premised on such imaginings; rather, the Court recognized the practical reality that there would be no new census before August 6, 2002. We likewise decline defendants' invitation to consider strained and unrealistic hypothetical scenarios in order to uphold the constitutionality of what is manifestly a local act.

For similar reasons, we must respectfully disagree with our dissenting colleague. The dissent notes that 1966 PA 261 had a similar 30-day provision for reapportionment, but the key difference here is that the other criteria in 1966 PA 261—namely the statement that it applied to counties with a population under 75,000—clearly rendered that apportionment requirement applicable to multiple counties. In contrast, because it applies only to counties that are not in compliance with the act *on the very day* that the act becomes effective, Public Act 280's 30-day apportionment requirement will plainly apply to only one county: Oakland County. See 2011 PA 280, §1(2).[1] Indeed, under the act's terms, even if every other county suddenly and miraculously became non-compliant on the day after the act became effective, those counties—unlike Oakland County—would not have to reduce their commissioners and reapportion until the time set for "subsequent apportionments", which can only mean the next decennial census. *Id.* Accordingly, we must conclude that the 30-day reapportionment requirement was intended to target Oakland County alone—and that makes it a local act.

[1] This Court will not uphold an act as a general act where it is plain that the requirements are a "manifest subterfuge" designed to limit its application to only one locality. See *Avis Rent-A-Car*, 400 Mich at 345, 345 n 7 (noting that an act with a population requirement that does not provide for the inclusion of other localities as they reach the population requirement is a local act).

C. SEVERABILITY

Although we agree with the trial court's conclusion that 2011 PA 280 is unconstitutional to the extent that it targets Oakland County alone, we do not agree that the remaining portions of the act constitute an impermissible local act. Because we must uphold the constitutionality of the act to the greatest extent possible, we will not invalidate the entire act if the offending provisions can be severed from the act. See *Avis Rent-A-Car System, Inc v City of Romulus*, 400 Mich 337, 348-349; 254 NW2d 555 (1977). Because it is undisputed that it was not enacted in compliance with Const 1963, art 4, § 29, we hold that the first sentence of 2011 PA 280, § 1(2)[2] is unconstitutional and should be stricken from the act. In all other respects, Public Act 280 is a valid statute of general application.

IV. CONCLUSION

For the above reasons, we affirm the circuit court's grant of summary disposition as to the unconstitutionality of the first sentence of 2011 PA 280, § 1(2) as an improperly enacted local act. However, we do not agree that the remaining provisions of the act are invalid on the same basis; those provisions are sufficiently general to be passed without meeting the requirements of Const 1963, art 4, § 29. Moreover, given our resolution of this issue, we need not address the alternate bases proffered by the trial court for concluding that 2011 PA 280 is unconstitutional. The practical effect of our decision today is to permit Oakland County to retain its current level of commissioners and its current apportionment until after the next decennial census.[3] As such, the trial court's concerns about an unfunded mandate and the lack of judicial oversight of the reapportionment process are no longer a concern. Therefore, we conclude that the circuit court erred to the extent that it invalidated the entire act as unconstitutional. For these reasons, we affirm the trial court's order in part, reverse it in part, and remand for entry of an order invalidating the offending sentence, but otherwise upholding the constitutionality of the act.

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[2] This sentence reads: "If a county is not in compliance with Section 2 on the effective date of the amendatory act that added this subsection, the county apportionment commission of that county shall, within 30 days of the effective date of the amendatory act that added this subsection, apportion the county in compliance with section 2." 2011 PA 280, § 1(2).

[3] The remaining provision of 2011 PA 280, § 1(2) states: "For subsequent apportionments in a county that is apportioned under this subsection, the county apportionment commission of that county shall comply with the provisions of subsection (1)." Thus, Oakland County will not have to comply with amended section 1, which incorporates amended section 2, until the next reapportionment.

Affirmed in part, reversed in part, and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction. Because there were important issues of public concern, we order that no party may tax its costs. MCR 7.219(A).

/s/ Michael J. Kelly
/s/ Amy Ronayne Krause

APPORTIONMENT OF COUNTY BOARDS OF COMMISSIONERS
Act 261 of 1966

AN ACT to provide for the apportionment of county boards of commissioners; to prescribe the size of the board; to provide for appeals; to prescribe the manner of election of the members of the county board of commissioners; to provide for compensation of members; to prescribe penalties and provide remedies; and to repeal acts and parts of acts.

History: 1966, Act 261, Eff. Mar. 10, 1967;—Am. 1968, Act 153, Imd. Eff. June 13, 1968;—Am. 1969, Act 137, Eff. Mar. 20, 1970;—Am. 1998, Act 203, Eff. Mar. 23, 1999.

The People of the State of Michigan enact:

***** *46.401 THIS SECTION IS AMENDED EFFECTIVE MARCH 28, 2012: See 46.401.amended* *****

46.401 County apportionment commission; apportionment of county into county commissioner districts.

Sec. 1. Within 60 days after the publication of the latest United States official decennial census figures, the county apportionment commission in each county of this state shall apportion the county into not less than 5 nor more than 35 county commissioner districts as nearly of equal population as is practicable and within the limitations of section 2. In counties under 75,000, upon the effective date of this act, the boards of commissioners of such counties shall have not to exceed 30 days into which to apportion their county into commissioner districts in accordance with the provisions of this act. If at the expiration of the time as set forth in this section a board of commissioners has not so apportioned itself, the county apportionment commission shall proceed to apportion the county under the provisions of this act.

History: 1966, Act 261, Eff. Mar. 10, 1967;—Am. 1968, Act 153, Imd. Eff. June 13, 1968;—Am. 1969, Act 137, Eff. Mar. 20, 1970.

***** *46.401.amended THIS AMENDED SECTION IS EFFECTIVE MARCH 28, 2012* *****

46.401.amended County apportionment commission; apportionment of county into county commissioner districts.

Sec. 1. (1) Within 60 days after the publication of the latest United States official decennial census figures, the county apportionment commission in each county of this state shall apportion the county into not less than 5 nor more than 21 county commissioner districts as nearly of equal population as is practicable and within the limitations of section 2.

(2) If a county is not in compliance with section 2 on the effective date of the amendatory act that added this subsection, the county apportionment commission of that county shall, within 30 days of the effective date of the amendatory act that added this subsection, apportion the county in compliance with section 2. For subsequent apportionments in a county that is apportioned under this subsection, the county apportionment commission of that county shall comply with the provisions of subsection (1).

History: 1966, Act 261, Eff. Mar. 10, 1967;—Am. 1968, Act 153, Imd. Eff. June 13, 1968;—Am. 1969, Act 137, Eff. Mar. 20, 1970;—Am. 2011, Act 280, Eff. Mar. 28, 2012.

***** *46.402 THIS SECTION IS AMENDED EFFECTIVE MARCH 28, 2012: See 46.402.amended* *****

46.402 Number of county commissioners based on county population.

Sec. 2.

County Population	Number of Commissioners
Under 5,001	Not more than 7
5,001 to 10,000	Not more than 10
10,001 to 50,000	Not more than 15
50,001 to 600,000	Not more than 21
600,001 to 1,000,000	17 to 35
Over 1,000,000	25 to 35

History: 1966, Act 261, Eff. Mar. 10, 1967;—Am. 1969, Act 137, Eff. Mar. 20, 1970;—Am. 2004, Act 369, Imd. Eff. Oct. 11, 2004.

***** *46.402.amended THIS AMENDED SECTION IS EFFECTIVE MARCH 28, 2012* *****

46.402.amended Number of county commissioners based on county population.

Sec. 2.

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County Population	Number of Commissioners
Under 5,001	Not more than 7
5,001 to 10,000	Not more than 10
10,001 to 50,000	Not more than 15
Over 50,000	Not more than 21

History: 1966, Act 261, Eff. Mar. 10, 1967;—Am. 1969, Act 137, Eff. Mar. 20, 1970;—Am. 2004, Act 369, Imd. Eff. Oct. 11, 2004;—Am. 2011, Act 280, Eff. Mar. 28, 2012.

***** *46.403 THIS SECTION IS AMENDED EFFECTIVE MARCH 28, 2012: See 46.403.amended* *****

46.403 County apportionment commission; membership; convening apportionment commission; adopting rules of procedure; quorum; action by majority vote; conducting business at public meeting; notice of meeting; availability of certain writings to public.

Sec. 3. (1) The county apportionment commission shall consist of the county clerk, the county treasurer, the prosecuting attorney, and the statutory county chairperson of each of the 2 political parties receiving the greatest number of votes cast for the office of secretary of state in the last preceding general election. If a county does not have a statutory chairperson of a political party, the 2 additional members shall be a party representative from each of the 2 political parties receiving the greatest number of votes cast for the office of secretary of state in the last preceding general election and appointed by the chairperson of the state central committee for each of the political parties. The clerk shall convene the apportionment commission and they shall adopt their rules of procedure. Three members of the apportionment commission shall be a quorum sufficient to conduct its business. All action of the apportionment commission shall be by majority vote of the commission.

(2) The business which the apportionment commission may perform shall be conducted at a public meeting held in compliance with Act No. 267 of the Public Acts of 1976, being sections 15.261 to 15.275 of the Michigan Compiled Laws. Public notice of the time, date, and place of the meeting shall be given in the manner required by Act No. 267 of the Public Acts of 1976.

(3) A writing prepared, owned, used, in the possession of, or retained by the commission in the performance of an official function shall be made available to the public in compliance with Act No. 442 of the Public Acts of 1976, being sections 15.231 to 15.246 of the Michigan Compiled Laws.

History: 1966, Act 261, Eff. Mar. 10, 1967;—Am. 1977, Act 185, Imd. Eff. Nov. 17, 1977.

***** *46.403.amended THIS AMENDED SECTION IS EFFECTIVE MARCH 28, 2012* *****

46.403.amended County apportionment commission; membership; convening apportionment commission; adopting rules of procedure; quorum; action by majority vote; conducting business at public meeting; notice of meeting; availability of certain writings to public.

Sec. 3. (1) Except as otherwise provided in this subsection, the county apportionment commission shall consist of the county clerk, the county treasurer, the prosecuting attorney, and the statutory county chairperson of each of the 2 political parties receiving the greatest number of votes cast for the office of secretary of state in the last preceding general election. If a county does not have a statutory chairperson of a political party, the 2 additional members shall be a party representative from each of the 2 political parties receiving the greatest number of votes cast for the office of secretary of state in the last preceding general election and appointed by the chairperson of the state central committee for each of the political parties. In a county with a population of 1,000,000 or more that has adopted an optional unified form of county government under 1973 PA 139, MCL 45.551 to 45.573, with an elected county executive, the county apportionment commission shall be the county board of commissioners. The clerk shall convene the apportionment commission and they shall adopt their rules of procedure. A majority of the members of the apportionment commission shall be a quorum sufficient to conduct its business. All action of the apportionment commission shall be by majority vote of the commission.

(2) The business which the apportionment commission may perform shall be conducted at a public meeting held in compliance with the open meetings act, 1976 PA 267, MCL 15.261 to 15.275. Public notice of the time, date, and place of the meeting shall be given in the manner required by the open meetings act, 1976 PA 267, MCL 15.261 to 15.275.

(3) A writing prepared, owned, used, in the possession of, or retained by the commission in the performance of an official function shall be made available to the public in compliance with the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

History: 1966, Act 261, Eff. Mar. 10, 1967;—Am. 1977, Act 185, Imd. Eff. Nov. 17, 1977;—Am. 2011, Act 280, Eff. Mar. 28, 2012.

46.404 County commissioner districts; guidelines for apportionment.

Sec. 4. In apportioning the county into commissioner districts, the county apportionment commission shall be governed by the following guidelines in the stated order of importance:

(a) All districts shall be single-member districts and as nearly of equal population as is practicable. The latest official published figures of the United States official census shall be used in this determination, except that in cases requiring division of official census units to meet the population standard, an actual population count may be used to make such division. Other governmental census figures of total population may be used if taken subsequent to the last decennial United States census and the United States census figures are not adequate for the purposes of this act. The secretary of state shall furnish the latest official published figures to the county apportionment commissions forthwith upon this act taking effect, and within 15 days after publication of subsequent United States official census figures.

A contract may be entered into with the United States census bureau to make any special census if the latest United States decennial census figures are not adequate.

(b) All districts shall be contiguous.

(c) All districts shall be as compact and of as nearly square shape as is practicable, depending on the geography of the county area involved.

(d) No township or part thereof shall be combined with any city or part thereof for a single district, unless such combination is needed to meet the population standard.

(e) Townships, villages and cities shall be divided only if necessary to meet the population standard.

(f) Precincts shall be divided only if necessary to meet the population standard.

(g) Residents of state institutions who cannot by law register in the county as electors shall be excluded from any consideration of representation.

(h) Districts shall not be drawn to effect partisan political advantage.

History: 1966, Act 261, Eff. Mar. 10, 1967;—Am. 1969, Act 137, Eff. Mar. 20, 1970.

46.405 Apportionment plan; filing by county apportionment commission; access.

Sec. 5. The apportionment plan approved by the commission shall be filed in the office of the county clerk at which time it shall become effective, and copies of it shall be forthwith forwarded by the county clerk to the secretary of state for filing and shall be made available at cost to any registered voter of the county.

History: 1966, Act 261, Eff. Mar. 10, 1967.

46.406 Apportionment plan; petition for review.

Sec. 6. Any registered voter of the county within 30 days after the filing of the plan for his county may petition the court of appeals to review such plan to determine if the plan meets the requirements of the laws of this state. Any findings of the court of appeals may be appealed to the supreme court of the state as provided by law.

History: 1966, Act 261, Eff. Mar. 10, 1967.

46.407 Apportionment plan; failure of apportionment commission to submit; submission by registered voter.

Sec. 7. If the apportionment commission has failed to submit a plan for its county within 60 days but not less than 30 days after the latest official published census figures are available or within such additional time as may be granted by the court of appeals for good cause shown on petition from the apportionment commission, any registered voter of the county may submit a plan to the commission for approval. The commission shall choose from among those submitted to it a plan meeting the requirements of the laws of this state and file such plan in the office of the county clerk as set forth in section 5 within 30 days after the deadline for the filing of the commission's own plan or any extension granted thereon.

History: 1966, Act 261, Eff. Mar. 10, 1967.

46.408 Official apportionment plan.

Sec. 8. Once an apportionment plan has been found constitutional and according to the provisions of this act and all appeals have been exhausted, or if no appeal is taken, when the time for appeal has expired, that plan shall be the official apportionment plan for the county until the next United States official decennial census figures are available.

History: 1966, Act 261, Eff. Mar. 10, 1967.

46.409 County board of commissioners; number per district; prohibited representation.

Sec. 9. The electors of each district established in accordance with this act shall elect 1 county commissioner to the county board of commissioners. There shall be no representation on the county board of commissioners other than that set forth by the provisions of this act.

History: 1966, Act 261, Eff. Mar. 10, 1967;—Am. 1969, Act 137, Eff. Mar. 20, 1970.

46.410 County commissioners; terms.

Sec. 10. The term of each commissioner shall be concurrent with that of state representatives as specified in article 4, section 3 of the state constitution.

History: 1966, Act 261, Eff. Mar. 10, 1967;—Am. 1969, Act 137, Eff. Mar. 20, 1970.

46.411 Candidate for office of county commissioner; qualifications; nomination; filing fee; eligibility.

Sec. 11. A candidate for the office of county commissioner shall be a resident and registered voter of the district that he or she seeks to represent and shall remain a resident and registered voter to hold his or her office, if elected. Nominations and elections for commissioners shall be by partisan elections. In order for the name of a candidate for nomination for the office of county commissioner to appear on the official primary ballot, a nominating petition or $100.00 filing fee shall be filed with the county clerk. The nominating petition shall have been signed by a number of qualified and registered electors residing within the district as determined under section 544f of the Michigan election law, 1954 PA 116, MCL 168.544f. The deadline for filing nomination petitions or filing fees is the same as for a candidate for state representative. A person who has been convicted of a violation of section 12a(1) of 1941 PA 370, MCL 38.412a, is not eligible to be a county commissioner for 20 years after the conviction.

History: 1966, Act 261, Eff. Mar. 10, 1967;—Am. 1969, Act 137, Eff. Mar. 20, 1970;—Am. 1982, Act 504, Eff. Mar. 30, 1983;—Am. 2002, Act 158, Eff. Jan. 1, 2003.

46.411a County board of commissioners; candidates for office, filing fees, returns and forfeitures.

Sec. 11a. For candidates paying a filing fee in lieu of filing petitions under section 11, the filing fees shall be returned to all such candidates who shall be nominated and to a like number of candidates who are next highest in order thereto in the number of votes received in the primary election; and in case 2 or more candidates shall tie in having the lowest number of votes allowing a refund hereunder, the sum of $100.00 shall be divided or prorated among them. The deposits of all other defeated candidates, as well as the deposits of all candidates who may withdraw or be disqualified, shall be forfeited and the candidates shall be notified of the forfeitures.

History: Add. 1969, Act 284, Eff. Mar. 20, 1970.

46.411b Violation of MCL 168.1 to 168.992 applicable to petitions; penalties.

Sec. 11b. A petition under section 11, including the circulation and signing of the petition, is subject to section 488 of the Michigan election law, 1954 PA 116, MCL 168.488. A person who violates a provision of the Michigan election law, 1954 PA 116, MCL 168.1 to 168.992, applicable to a petition described in this section is subject to the penalties prescribed for that violation in the Michigan election law, 1954 PA 116, MCL 168.1 to 168.992.

History: Add. 1998, Act 203, Eff. Mar. 23, 1999.

46.412 Vacancy in office of commissioner; appointment; special election.

Sec. 12. When a vacancy occurs in the office of commissioner by death, resignation, removal from the district, or removal from office, the vacancy shall be filled by appointment within 30 days by the county board of commissioners of a resident and registered voter of that district. A person who has been convicted of a violation of section 12a(1) of Act No. 370 of the Public Acts of 1941, being section 38.412a of the Michigan Compiled Laws, shall not be eligible for appointment to the office of county commissioner for a period of 20 years after conviction. The person appointed to fill a vacancy which occurred in an odd numbered year shall serve until the vacancy is filled in a special election. That special election shall be called by the county board of commissioners. The person appointed to fill a vacancy which occurs in a year which is an election year for the office of county commissioner shall serve for the remainder of the unexpired term. If the county board of commissioners does not fill the vacancy by appointment within 30 days, that vacancy shall be filled by a special election regardless of whether the year is an election year or an odd year.

History: 1966, Act 261, Eff. Mar. 10, 1967;—Am. 1969, Act 137, Eff. Mar. 20, 1970;—Am. 1972, Act 180, Imd. Eff. June 17, 1972;—Am. 1978, Act 18, Imd. Eff. Feb. 15, 1978;—Am. 1982, Act 504, Eff. Mar. 30, 1983.

46.414 Repeal; effective date; validity of actions.

Sec. 14. Section 27 of Act No. 279 of the Public Acts of 1909, as amended, being section 117.27 of the Compiled Laws of 1948, is repealed. This section shall become effective in any county upon taking office of supervisors elected pursuant to this act. Any action taken by any board of supervisors shall not be invalid solely due to the provisions of this section.

History: 1966, Act 261, Eff. Mar. 10, 1967;—Am. 1968, Act 153, Imd. Eff. June 13, 1968.

46.415 County board of commissioners; compensation and mileage reimbursement of members.

Sec. 15. (1) A member of the county board of commissioners shall receive the compensation and mileage reimbursement fixed by resolution of the county board of commissioners or for a county which has a county officers compensation commission, fixed by a determination of the county officers compensation commission which is not rejected.

(2) The per mile mileage reimbursement fixed by the county board of commissioners or the county officers compensation commission shall not exceed the mileage reimbursement set for state officers as determined by the state officers compensation commission.

(3) Except as provided under subsection (5), changes in compensation shall become effective only after the time members of the county board of commissioners commence their terms of office after a general election, provided that it is voted upon before the commencement of the new terms of office, or for a county which has a county officers compensation commission, after the beginning of the first odd numbered year after the determination is made by the county officers compensation commission and is not rejected.

(4) This section shall not be construed to prohibit a structured change in compensation implemented in phases over the term of office.

(5) A change in compensation under subsections (1) and (3) may be made in 2005 to be effective on or after January 1, 2006.

(6) As used in this section, "compensation" shall not include mileage reimbursement.

History: 1966, Act 261, Eff. Mar. 10, 1967;—Am. 1968, Act 153, Imd. Eff. June 13, 1968;—Am. 1969, Act 137, Eff. Mar. 20, 1970;—Am. 1975, Act 207, Imd. Eff. Aug. 21, 1975;—Am. 1978, Act 476, Eff. Dec. 1, 1978;—Am. 1980, Act 187, Imd. Eff. July 3, 1980;—Am. 2005, Act 20, Imd. Eff. May 5, 2005.

46.416 References to county supervisors deemed to mean county commissioners.

Sec. 16. All references to county supervisors or county boards of supervisors in any other act shall be deemed to mean county commissioners and county boards of commissioners as established by this act and such county boards of commissioners shall be the county board of supervisors referred to in article 7 of the state constitution.

History: Add. 1969, Act 137, Eff. Mar. 20, 1970.

Act No. 280
Public Acts of 2011
Approved by the Governor
December 19, 2011
Filed with the Secretary of State
December 20, 2011
EFFECTIVE DATE: 91st day after final adjournment of 2011 Regular Session

STATE OF MICHIGAN
96TH LEGISLATURE
REGULAR SESSION OF 2011

Introduced by Rep. Jacobsen

ENROLLED HOUSE BILL No. 5187

AN ACT to amend 1966 PA 261, entitled "An act to provide for the apportionment of county boards of commissioners; to prescribe the size of the board; to provide for appeals; to prescribe the manner of election of the members of the county board of commissioners; to provide for compensation of members; to prescribe penalties and provide remedies; and to repeal acts and parts of acts," by amending sections 1, 2, and 3 (MCL 46.401, 46.402, and 46.403), section 2 as amended by 2004 PA 369.

The People of the State of Michigan enact:

Sec. 1. (1) Within 60 days after the publication of the latest United States official decennial census figures, the county apportionment commission in each county of this state shall apportion the county into not less than 5 nor more than 21 county commissioner districts as nearly of equal population as is practicable and within the limitations of section 2.

(2) If a county is not in compliance with section 2 on the effective date of the amendatory act that added this subsection, the county apportionment commission of that county shall, within 30 days of the effective date of the amendatory act that added this subsection, apportion the county in compliance with section 2. For subsequent apportionments in a county that is apportioned under this subsection, the county apportionment commission of that county shall comply with the provisions of subsection (1).

Sec. 2.

County Population	Number of Commissioners
Under 5,001	Not more than 7
5,001 to 10,000	Not more than 10
10,001 to 50,000	Not more than 15
Over 50,000	Not more than 21

Sec. 3. (1) Except as otherwise provided in this subsection, the county apportionment commission shall consist of the county clerk, the county treasurer, the prosecuting attorney, and the statutory county chairperson of each of the 2 political parties receiving the greatest number of votes cast for the office of secretary of state in the last preceding general election. If a county does not have a statutory chairperson of a political party, the 2 additional members shall be a party representative from each of the 2 political parties receiving the greatest number of votes cast for the office of secretary of state in the last preceding general election and appointed by the chairperson of the state central committee for each of the political parties. In a county with a population of 1,000,000 or more that has adopted an optional unified form of county government under 1973 PA 139, MCL 45.551 to 45.573, with an elected county executive, the county apportionment commission shall be the county board of commissioners. The clerk shall convene the

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apportionment commission and they shall adopt their rules of procedure. A majority of the members of the apportionment commission shall be a quorum sufficient to conduct its business. All action of the apportionment commission shall be by majority vote of the commission.

(2) The business which the apportionment commission may perform shall be conducted at a public meeting held in compliance with the open meetings act, 1976 PA 267, MCL 15.261 to 15.275. Public notice of the time, date, and place of the meeting shall be given in the manner required by the open meetings act, 1976 PA 267, MCL 15.261 to 15.275.

(3) A writing prepared, owned, used, in the possession of, or retained by the commission in the performance of an official function shall be made available to the public in compliance with the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

Clerk of the House of Representatives

Secretary of the Senate

Approved _____

Governor